MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 4209 OF 1996

CANARA BANK .. PLAINTIFFS

Vs.

M/s. OM ENTERPRISES & ORS. .. DEFENDANTS

Mr. Avadhut Prabhu i/b M. Dhruva & Co. for plaintiffs

None for the defendants

CORAM: SMT. RANJANA DESAI, J.

DATED: OCTOBER 4, 2007.

P.C.

. This suit is placed before me under the caption "Undefended Suits for Exparte Decree". The plaintiff has filed this suit inter alia for a decree directing the defendants jointly and severally to pay to the plaintiffs a sum of Rs.1,14,972/- under the cash credit facility as per the particulars of claim being Exhibit 'L' annexed to the plaint with interest thereon @ 17.75% per annum with quarterly rests from the date hereof till payment.

2. Affidavit in lieu of Examination-in-Chief dated 13/8/07 is filed on behalf of the plaintiffs by Mr. T.V.J.S. Srinivasa Rao, Officer of the plaintiffs, Santacruz Branch, Mumbai. The said affidavit is marked "X".

3. The plaintiffs have also filed compilation of documents on which plaintiffs have placed reliance. All the documents are original documents except the correspondence. The said compilation is marked "Y-Collectively." Mr. T.V.J.S. Srinivasa Rao has identified the signatures of the signatories of the security documents from the documents available with the plaintiffs.

4. The plaintiffs' officer Mr. Rao is present in the court. He confirmed the contents of the plaint and the affidavit of evidence and the documents.

5. The case of the plaintiffs as is evident from the plaint and affidavit-in-lieu of evidence is that the plaintiffs are a Body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The plaintiffs are carrying on business as bankers. Defendant 2 is carrying on business as

Sole Proprietor in the name and style of M/s. Om Enterprises, the first defendant herein and is engaged in the business of selling and servicing of grinders. Defendant 3 is a guarantor and is sued in his capacity as a guarantor.

6. Since 1994 the defendants have been availing of various credit facilities from the plaintiffs. In or about October, 1994 at the request of the defendants, the plaintiffs granted to the defendants the cash credit facility of Rs.1,50,000/-. In respect thereof the defendants executed the following security documents:

a) A Demand Promissory note dated 24/10/94 whereby the defendants promised to pay to the plaintiffs a sum of Rs.1,00,000/- together with interest @ 3.5% OBR minimum 15.5% per annum with quarterly rests. The said demand promissory note is tendered in the court. It is marked Exh. "A".

b) A Letter of Request for Overdraft facility dated 24/10/1994, by 2nd defendant on behalf of the 1st defendant. It is tendered in evidence and is marked Exh."B".

c) A Cash Credit Agreement dated 24/10/94, whereby the defendant secured and hypothecated stocks in favour of the plaintiff and also the moveable properties and the stocks. The said agreement is tendered in evidence and is marked Exh. "C".

d) An Agreement of Collateral Security dated 24/10/94 whereby the defendants secured and hypothecated in favour of the plaintiffs the movable properties. The said agreement is tendered in evidence and is marked Exh. "D"

e) Letter of undertaking dated 20/10/94 whereby the defendants undertake to abide by the conditions of the plaintiffs for repayment. The said letter is tendered in evidence and is marked Exh. "E".

7. The plaintiffs submit that by way of further consideration defendant 3 by Letter of Guarantee dated 24/10/94 unconditionally guaranteed the payment of all the amounts advanced and all liabilities of defendant 1 to the extent of Rs. 1 lac granted by the plaintiffs under the aforesaid Cash Credit facility. The said letter of guarantee dated 24/10/94 is tendered in evidence. It is marked Exh. "F".

8. It is the case of the plaintiffs that defendants 1 to 3 duly availed of the aforesaid cash facility. The plaintiffs opened an account in the name of defendant No. 1 in respect of the said credit facility wherein the plaintiffs duly debited the amounts lent and advanced to defendant 1 under the aforesaid credit facility from time to time.

9. It is further the case of the plaintiffs that at the request of the defendants the plaintiffs enhanced the Cash Credit Hypothecation of Book Debts facility to the extent of Rs.50,000/- and the total aggregate limit of Rs.1.50 lacs. In respect thereof the defendants executed the following security documents in favour of the plaintiffs:

a) A Link letter in respect of enhancement dated 31st October, 1994 whereby the defendants requested for additional credit facility of Rs.50,000. It is tendered in evidence and is marked Exh. "G".

b) A Demand Promissory Note dated 31st October, 1994 whereby the defendant promised to pay to the plaintiffs or Order the sum of Rs.50,000/- together with interest thereon at the rate of 3.5% OBR

Minimum 15.5% per annum with quarterly rests. It is tendered in evidence and is marked Exh. "H".

c) A Supplemental Agreement for Hypothecation of Stocks dated 31st October, 1994 whereby the defendants hypothecated stocks in favour of the plaintiffs as more particularly described in the General Terms to the Principal Agreement dated 24th October, 1994. The said agreement is tendered in evidence. It is marked Exh. "I".

10. By letters of acknowledgement of Debt/Securities dated 3rd August, 1995, 4th October, 1995 and 3rd November, 1995 the defendants acknowledged their indebtedness for the amounts stated therein in respect of the Cash Credit facility. They are marked Exh. "J(1), J(2) & J(3)."

11. According to the plaintiffs, the account of defendant 1 was overdrawn since January, 1995. Defendant 1 failed to set right the account in order as assured. Defendant 1 assured to make payment by their various letters, however failed to do so. Therefore, the plaintiffs by their advocate’s letter dated 29th January, 1996 stated

the facts and called upon the defendants jointly and severally to pay to the plaintiffs the amounts stated therein due under the aforesaid credit facilities with interest within seven days from receipt thereof. Copy of the said letter is on record, it is marked Exh. "K". The defendants, however, failed to comply with the said demand.

12. In the circumstances it is the case of the plaintiffs that there is now due and payable by the defendants jointly and severally to the plaintiffs a sum of Rs.1,14,972/- as on 22nd October 1996 under the Cash Credit Account as per the particulars of claim with further interest thereon @ 17.75% per annum with quarterly rests from the date hereof till payment.

13. According to the plaintiffs the payment of the amounts mentioned above is duly secured by a valid and subsisting hypothecation of goods and moveables described in as per Exhibits "C" and "D". The plaintiffs case is that the plaintiffs are entitled to realise the hypothecated goods and moveables.

14. The defendants have been served, however the defendants have not contested the suit. They have

not filed written statement.

15. Having perused the documents on which the plaintiffs have placed reliance, having read the plaint and the affidavit in lieu of examination-in-chief, the contents of which have been confirmed by Mr. T.V.J.S. Srinivasa Rao, Officer of the plaintiffs, in my opinion, the plaintiffs are entitled to a decree in terms of prayer clause (a) with the modification as regards the rate of interest. The plaintiffs are entitled to interest @ 10% per annum from the date of the decree till realisation and not @ 17.75% per annum with quarterly rests. There shall also be a decree in terms of prayer clauses (b) and (c).

16. Hence the suit is decreed in terms of prayer clause (a) with modification as regards rate of interest from the date of decree till realisation. The plaintiffs shall be entitled to interest at 10% per annum from the date of the decree till realisation and not at 17.75% per annum with quarterly rests as prayed for. There shall also be a decree in terms of prayer clauses (b) and (c).

17. Receiver to continue for a period of six

months.

18. Suit is disposed of.

JUDGE.